

EXHIBIT 2

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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK
2 -----x

3 IN RE: MTBE, et al.
3 -----x

00 MDL 1358 (SAS)

New York, N.Y.
June 25, 2009
5:30 p.m.

6 Before:

7 HON. SHIRA A. SCHEINDLIN,
7

District Judge

9 APPEARANCES

10 MICHAEL A. CARDOZO

10 Corporation Counsel of the City of New York
11 Attorneys for City Plaintiffs

11 BY SUSAN E. AMRON
12 WILLIAM PLACHE
12 JOSHUA STEIN
13 -and-

14 SHER LEFF LLP

14 BY: VICTOR M. SHER

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16 Attorneys for Plaintiffs

17 BY: ROBERT S. CHAPMAN

18 MCDERMOTT, WILL & EMERY

18 Attorneys for Defendant Exxon Mobil

19 BY: PETER JOHN SACRIPANTI

19 JAMES PARDO

20 WILLIAM STACK

20 STEPHEN RICCARDULLI

21 JENNIFER KALNINS TEMPLE
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1 (Case called)

2 (In open court)

3 THE COURT: Okay, there were two items that were
4 placed on today's agenda, so to speak, through some letters. I
5 don't think we satisfied the 48-hour rule. The plaintiffs here
6 obviously didn't hear about the 48-hour rule. It arose in a
7 conference on the Napoli Bern case decision. I was very
8 annoyed with them, because the letters were flying in midnight
9 the night before and 10:00 the day of, and, you know, the judge
10 is on trial in a seven-week never-ending saga, and I can't read
11 the letters that are prepared improperly for the conference
12 that people are writing at the last minute.

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19 THE COURT: Isn't the letter good enough? Can't I
20 decide on the letter?

21 MR. SHER: I think not.

22 THE COURT: It's late. Is this a phase 1 expert?

23 MR. SHER: No, phase 2.

24 MR. SACRIPANTI: I think the way your Honor has
25 described phase 1, it's a phase 2 expert, but --

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1 THE COURT: Of course. I didn't realize. I thought
2 we were going to do it on letters. Can you do it
3 expeditiously?

4 MR. SACRIPANTI: Your Honor, let me add another one to
5 the pot. If you will recall, the Terry deposition, you allowed
6 us to take that after he amended his report.

7 THE COURT: Yes, right.

8 MR. SACRIPANTI: And we said if, if, and we understand
9 we don't file Daubert motions for the fun of it, but if we
10 thought we had a true Daubert issue we would do it. We have
11 that depo scheduled for Wednesday of next week. Your Honor
12 could get within that ten-day period a Daubert motion. I just
13 want to put it on your radar. I don't know, but you could.

14 THE COURT: Okay. Anyway, please take care of this
15 McGuire person right away. Please keep it as short as you can
16 and as pointed as you can.

17 MR. SACRIPANTI: The Daubert motion.

18 THE COURT: The one that Mr. Sher is speaking of.

19 MR. SACRIPANTI: He's moving.

20 MR. SHER: We'll do our best to keep it brief, but
21 persuasive. Two questions about your rulings on subpoenas from
22 yesterday.

23 THE COURT: Yes.

24 MR. SHER: First, we assumed that the 30(b)(6)
25 subpoenas will be for attendance at trial here?

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1 THE COURT: Yes, with an option. I mean, in other
2 words, if the parties want to agree on a video transmission,
3 that's up to them.

4 MR. SHER: But the subpoena will be for here.

5 THE COURT: For a 30(b)(6), yes.

6 MR. SACRIPANTI: We're happy to produce him. Our
7 30(b)(6)'s that are outside New York State or a hundred miles
8 we will produce at wherever Mr. Sher says and he can do it by
9 video.

10 THE COURT: No, he wants them live in New York and I
11 said 30(b)(6) for this purpose is a party, it's Exxon.

12 MR. SACRIPANTI: I'm behind in your Honor's rulings.
13 Forgive me.

14 THE COURT: You haven't read that one yet?

15 MR. SACRIPANTI: That's what I mean by it.

16 THE COURT: Take a look at it. That's what I meant.
17 Unless there's an agreement to do it by video.

18 MR. SHER: There's a handful, and I believe that it is
19 less than five of Exxon Mobil related witnesses who were
20 produced as the equivalent of 30(b)(6)'s in prior state court
21 actions and we assume we can treat them, because under the
22 deposition protocol of CM06 --

23 THE COURT: You're using them. Their testimony is

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24 standing as 30(b)(6).
25 MR. SHER: Right. So to the extent we subpoena those
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1 witnesses as well, it would be for appearance here.
2 THE COURT: If you're using the transcript or the
3 testimony they gave in another matter where they were produced
4 by Exxon as 30(b)(6), that only seems fair again.
5 MR. PARDO: They're not 30(b)(6) in this case.
6 THE COURT: But Mr. Pardo, the testimony they gave --
7 we have a CMO that says we don't want to repeat things that
8 have been done in other actions. If they are speaking for
9 Exxon, if they're speaking as a corporation with a voice, they
10 should be here.
11 MR. SACRIPANTI: I have to ask who they are. In some
12 circumstances, they may be retired.
13 THE COURT: Of course. You have to talk to each
14 other.
15 MR. SHER: I can't remember the names.
16 THE COURT: You have to tee this up.
17 MR. PARDO: I believe Mr. Sacripanti is right, several
18 of these people are retired.
19 THE COURT: They may have to do it by video near their
20 place of residence, if they don't feel like traveling to New
21 York. But, I don't know, an all-expenses-paid by Exxon trip to
22 New York? Not a bad deal. Anyway, go ahead.
23 MR. SHER: I wanted to turn back to the formulation of
24 the phase 1 question.
25 THE COURT: Okay. You're finished your
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1 administrative?
2 MR. SHER: Yes, thank you.
3 THE COURT: Okay, I'm ready.
4 MR. SHER: This one has to do with the time frame
5 posed by the question to the jury.
6 THE COURT: You mean 15? Did we agree?
7 MR. SHER: We did, but there was an important caveat,
8 assuming funding is available.
9 THE COURT: Assuming funding is available.
10 MR. SHER: That's an important qualification on the
11 question, precisely because of the budget issues that have been
12 discussed.
13 MR. SACRIPANTI: That's -- sorry, when you're ready
14 I'll speak.
15 THE COURT: I have to think about that. I understood
16 that language was in there, but you have to prove something.
17 Otherwise, you really can't prove intent, a good faith intent
18 to do it. I mean, at some point it becomes a permanent
19 speculation as to if and when. If and when. And we don't want
20 an if and when charge. At some point you have to prove that
21 the City or the Water Financial Board or somebody is willing to
22 fund a project, somebody is willing to go out and fund a
23 project, I guess.
24 MR. SHER: If that's the case, then we have to have a
25 longer period than 15 years.
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